(31) (36)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

WRIT PETITION NO. 1868 OF 2003

Yashwant Tiwari
-Versus-
Ravindra Shrivastava and others

POST FOR ORDER ON 24 July, 2003.

Sd/-
L.C.BHADOO
Judge

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

WRIT PETITION NO. 1868 OF 2003

PETITIONER		Yashwant Tiwari S/o Late Shri Chandrika Prasad, aged about 54 years, Advocate, R/o Block-D 2, R Flat-7, Shri Ram Towers, Vyapar Vihar, Bilaspur (C.G.)
	- Versus-	
RESPONDENTS	1.	Shri Ravindra Shrivastava, Sr. Advocate, Advocate General, State of Chhattisgarh, Officer of the Advocate General High Court campus, Bilaspur (C.G.)
	2.	Shri Dr. Nirmal Kumar Shukla, Sr. Advocate, Additional Advocate General, State of Chhattisgarh, Office of the Advocate General State of Chhattisgarh, High Court campus, Bilaspur (C.G.).
	3.	Shri Sanjay Kumar Agarwal, Advocate, Deputy Advocate General, State of C.G. Office of the Advocate General, High Court Campus, Bilaspur (C.G.).
	4.	State of Chhattisgarh, Through Chief Secretary Department of Home Gad Law and Legislation, Mantralaya, D.K.S. Bhawan, Raipur (C.G.).
	5.	Union of India, Through Cabinet Secretary Department of Home & Law and Justice, New Delhi.
	6.	Chhattisgarh State Bar Council, Through Secretary/President, High Court campus, Bilaspur (C.G.)

O R D E R

(16th July, 2003)

By Justice L. C. Bhadoo.

1. By this writ petition, filed under Articles 226, 14, 16 and 21 of the Constitution of India Shri Yashwant Tiwari-the /

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petitioner, who is a practicing Advocate of this Court and a Member of the Chhattisgarh State Bar Council, has questioned the conduct of the Respondents No. 1 to 3.

2. The averments made by the petitioner in the petition are that on the occasion of 26th January, 2003 the Respondent No.4/State organized the Republic Day celebrations at the Police Stadium, Bilaspur. For this purpose special invitation cards were got printed and distributed by the District Magistrate, Bilaspur to certain category of persons, officers and authorities giving them special status by treating them as special invitees which according to the petitioner is discriminatory, violative of the principles of equality before Law and unconstitutional as this action of the Respondent No.4/State amounted to discriminating the other citizens. Even though the petitioner is also a member of the State Bar Council and Ex-Public Prosecutor and citizen of India practicing in the High Court of Chhattisgarh, he was not invited to the Republic Day Celebrations. All the citizens of India are equal before the law except the freedom fighters of India who fought and sacrificed for independence of India, therefore, only they are entitled for special honour and entitled for special invitation in the National Festival celebrationss.

3. On 26th January 2003 respondents No. 1 to 3 were in their car and were going to attend the Republic Day Celebrations. When they tried to cross the main security entrance gate of the Police Stadium with their vehicle, the Police officials on duty stopped their car for controlling the traffic and

maintaining the law and order and requested them to go to the place of celebrations on foot. However, respondents No. 1 to 3 felt humiliated and insulted and considering that attending the National Flag and Republic Day celebrations by walking on foot would lower down their reputation and status, they did not attend the main Republic Day Celebrations as they felt humiliated by the action of traffic Police who stopped their car at the Police Stadium Respondents No. 1 to 3 were asked by the traffic Police to wait for a minute as the Chief Minister convoy was making entry into the Police Stadium from other side on the same route. But the respondents No. 1 to 3 went back without attending the celebrations. Respondent No.1 admitted this fact to the correspondent of the Hindustan Times, which was reported in Daily newspaper Hindustan Times, New Delhi dated 4.2.2003 at page 3. Thus, by this act the Respondents No. 1 to 3 have committed the wrongful act of dishonouring and insulting the National Flag and National honour of Republic Day and thereby dishonoured and insulted the Constitution of India, National Flag and the Republic of India, which is an offence punishable under the Prevention of Insult to National Honour Act, 1971. Respondents No. 1 to 3 have also lowered down the reputation of advocates in the society by their act. The act of the Respondents No. 1 to 3 in boycotting the Republic Day Celebrations by Respondents No. 1 to 3 indicates that for them their own self and official status is higher than the National prestigious occasion of the Republic Day

celebrations and honouring the National Flag for which thousands of citizens sacrificed their lives. The petitioner requested the Respondents No. 4 and 5 to take action of removal of respondents No. 1 to 3 but they have not taken any action.

4. According to the petitioner, by holding the post of Advocate General of the State of Chhattisgarh the Respondent No.1 has become the Ex Officio member of the Chhattisgarh State Bar Council though he is not an advocate on the electoral roll of the State Bar Council. As per the Advocates Act and the election rules regarding membership of State Bar Council, the Advocates who are not in the State roll and that State Bar Council. Thus, the Respondent No.1 is not qualified to be a member of the Chhattisgarh State Bar Council.

5. The further case of the petitioner is that the traffic Head Constable Jageshwer Sai Paikra and a Constable Mani Ram Bhagat who were deployed at the main security entrance gate discharged their official duty entrusted to them honestly but the respondent No.4 punished these poor policemen and ordered their attachment to the police line without any fault on their part which is bad in law and undesirable.

6. The Special Invitation to the particular selected citizens of India other than the freedom fighter of India at Republic Day and Independence Day by respondents No. 4 and 5 is unconstitutional and discriminatory. The separate entry gate for common citizen of India and separate entry gate for

these invitees and officials and entry with vehicle who are not on duty at the celebrationss or chief guest or special designated quest are also bad in law, unconstitutional and discriminatory.

7. The petitioner has sought for relief in this petition to the following effect: -

(i) That the respondents No. 1 to 3 may kindly be declared disqualified from their respective post of Advocate General, Additional Advocate General and Deputy Advocate General.

(ii) The respondent No.1 may kindly be declared disqualified from remaining as Ex-Officio member of the Chhattisgarh State Bar Council being not on the roll of Advocates of Chhattisgarh State Bar Council after 1.11.2002.

(iii) An appropriate writ may kindly be issued to the respondents No. 4 and 5 restraining them from printing and distributing such invitation cards. The separate and special invitation and place for occupation and for entry allowing the vehicles beyond common entry and parking sector in National festivals namely Republic Day and Independence Day except the freedom fighters chief guest and special guest of celebrations foreign country guest by the respondents No. 4 and 5 and their officials may kindly be restrained being unconstitutional.

(iv) Any other relief by way of appropriate writ in the interest of National Honour and justice may kindly be also issued.

8. I have heard Mr. Yashwant Tiwari who is petitioner in person and practicing advocate of this Court. He argued that the Respondents No. 1 to 3 had boycotted the Republic Day celebrations 26th January 2003 because they were not allowed by the police officials on duty to go to the place of

celebrations in their car beyond traffic point. The said act comes within the purview of misconduct as also dishonoure & insult of the Constitution of India, National Flag and the Republic Day Celebrations. Thereby they are not entitled to continue on their respective post.

9. Shri Tiwari further argued that the respondent No.1 not being a member of the Bar Council of Chhattisgarh and not being on the electoral roll of the Advocates of the Chhattisgarh State Bar Council, is not entitled to be an Ex-Officio member of the Bar Council of the State of Chhattisgarh in the capacity of the Advocate General.

10. Shri Tiwari submitted that the action of the Respondent No. 4 in inviting the selected persons and officials by issuing them special invitation cards is discriminatory because the other citizens of India are not being given the same treatment. Therefore, the respondents No. 4 and 5 be restrained from issuing such invitation cards in future and further direction be issued that such invitation cards should be issued to freedom fighters as special invitees.

11. During the course of arguments this Court asked Mr. Tiwari with regard to the contents of his affidavit wherein he has mentioned that the contents of para 1to14 of the writ petition are true to the best of his knowledge and belief and information received. It has not been clearly spelled out in the affidavit as to from where and how he got the personal knowledge and from where he got the information because at the time of the alleged incident he was not present at the spot. About the information he submitted that respondent

No.1 himself gave the interview to the correspondent of the Hindustan Times, therefore, this is the base of the information. But in support of this he has not submitted any affidavit of the concerned correspondent or any other person who was present at the site at the time of the alleged incident.

12. It is true that as far as the Constitution of India is concerned, it is a sacrosanct document for every citizen of India because the Constitution of India given to themselves by the people of India having been adopted on 26th day of November, 1949 in the Constituent Assembly which came into force on 26th day of January 1950, to put in the language of ancient Indian jurisprudence is the "Raja Dharma", which is supreme. All the three organs of the State the Legislature, the Executive and the Judiciary are bound by the provisions contained therein and are required to celebrations within the four corners of the provisions. The argument some time advanced, as to the supremacy of the one organ over the other is futile. Dr. S. Radhakrishnan in his speech made in the Constituent Assembly supporting the Objectives Resolution moved by Jawaharlal Nehru, said that Dharma, righteousness is the king of kings. It is the ruler of both i.e. the people and the rulers themselves. It is the sovereignty of the law we have asserted. The Constitution is the heart and the sole of the nation and its people; an instrument of maintaining justice, liberty, equality, fraternity, asserting the worth and dignity of the individual and human life; a weapon in the hands of

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countrymen for fighting injustice, oppression, exploitation; Gita, Bible, Koran, Guru Granth Sahib, Buddhism of the masses, Vedantism for enlightened and a manifesto of human development, fusing the law of God and the law of Man, higher natural law and the positive law of governance, the law against all sorts of corruption and tyrannies curbing the greed and lust in society, the Rule of law concurrent to the rule of life wherein man is the measure of man.

13. Therefore the solemn resolution of the People of India is that every citizen must have unflinching faith and allegiance towards the Constitution of India and promote among them all unity and integrity of the Nation. The founding father of the Constitution in deference to the will of the people of India provided the Constitution of India, which was adopted on 26th Day of November 1949 and came into force on 26th day of January 1950. That is why the 26th January of every year is being celebrated as the Republic Day of India, which is a very prestigious celebration for every citizen of India. Therefore, nobody can have even lurking doubt in his mind to disrespect or dishonour or conduct or behave by act or otherwise to dishonour the National Flag, Constitution or any celebrations like Republic Day Celebrations of India.

14. Now coming to the factual matrix of the matter, every petitioner in order to substantiate the facts mentioned in the petition is required to file an affidavit supporting the contents of the writ petition so as to make out a prima facie case to enable the Court to proceed further in the matter taking the cognigence of the averments made in the petition

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and in compliance of that the petitioner herein has filed an affidavit in support of his petition which reads thus:-

"I, Yashwant Tiwari S/o late Shri Chandrika Prasad, aged about 54 years, Occupation Advocate R/o Block D-2, Flat No.7, Shri Ram Towers Vyapar Vihar, Bilaspur (C.G.) solemnly state on oath as under:-

1) That the contents of para 1 to 14 of writ petition are true to the best of my knowledge and information received and belief. Hence in support this affidavit."

15. A bare perusal of the above contents of the affidavit shows that according to the petitioner para 1 to 14 of the writ petition are true to the best of personal knowledge of Mr. Tiwari and also information received and belief. Admittedly Mr. Tiwari, the petitioner was not present at the site where the respondents No. 1 to 3 were alleged to have been stopped by the traffic police and the petitioner has not mentioned in the affidavit that what is the source of his personal knowledge. Therefore, so far as this part of the affidavit i.e. true to the best of the knowledge of the petitioner, is concerned, it is not correct.

16. Now coming to the question of information upon which the petitioner relied upon and filed this petition, in the affidavit the petitioner has not disclosed that what is his source of information and from where and whom he has derived the information about the alleged incident, which made him to believe the facts as true. In this affidavit the petitioner has not spelled out the source of information without which this aspect also cannot be considered as correct and believable.

17. Regarding source of information, Mr. Tiwari replied that the respondent No.1 himself gave interview to the correspondent of Hindustan Times, which had appeared in the Hindustan Times the newspaper (Annexure P/1). Mr. Tiwari has not filed the affidavit of that correspondent of the Hindustan Times in support of the petition. Therefore the petition is mainly based on the newspaper reporting appeared in the Hindustan Times Annexure P/1 and Dainik Bhaskar, Bilaspur Annexure P/2. The news paper reporting is merely a hearsay evidence which is not a primary evidence in the strict sense. Therefore no reliance can be placed on these newspaper report in order to make out a case and consider the petitioner's case as prima facie true.

18. The second point raised by Mr. Tiwari is that he had sent a letter to the Respondent No.1 on 29th January 2003, a copy of which he has annexed with this petition, but the respondent No.1 has not replied refuting the contents of the letter. A bare perusal of copy of this letter reveals that Mr. Tiwari simply expressed his anguish over the matter reported but he never asked for any reply from the Respondent No.1. Therefore, I am of the considered opinion that the petitioner has not been able to make out a prima facie case in order to substantiate the averments made in the writ petition so as to enable the Court to admit the petition and to issue notice to the respondents.

19. Now coming to the point raised by the petitioner that after formation of the State of Chhattisgarh the Respondent No.1 is not on the electoral roll of the State Bar Council and

therefore he cannot be a member of the State Bar Council, this part of the petition is also misconceived. Sub-Section (2) (a) of Section-3 of the Advocates Act, 1961 provides that in the case of the State Bar Council of Delhi, the Additional Solicitor-General of India, ex-officio; and in the case of any other State Bar Council, the Advocate-General of the State ex-officio, shall be members of a State Bar Council. In view of this provision the Advocate General of every State is member of the State Bar Council, ex-officio in the capacity of the Advocate General. In view of the above provision the contention of the petitioner does not survive that the Advocate General cannot be ex-officio member of the Bar Council unless and until he is on the roll of the State Bar Council. Therefore the challenge of the petitioner to this aspect has no force.

20. As far as the question of eligibility for being the Advocate General is concerned, as has been mentioned by the petitioner that Article 165 of the Constitution of India prescribes that the Governor of each State shall appoint a person who is qualified to be appointed a Judge of the High Court to be an Advocate General of the State. Therefore to become an Advocate General it is not necessary that the concerned person should be a member of the Bar Council or Bar Association of that State only. The only requirement is that the Governor can appoint a person as Advocate General who is eligible to become a High Court Judge. Therefore the challenge of the petitioner is misconceived as it has not been disputed by the petitioner that the Respondent No.1 is

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eligible to become a High Court Judge. Even otherwise, the petitioner has joined this issue in this petition, which is altogether a different issue from the main issue regarding boycotting of celebrations by Respondents No. 1 to 3. The main grievance of the petitioner appears to be regarding boycotting of the celebrations of 26th January by the Respondents No. 1 to 3 but this issue has been raised simultaneously. For each and every cause one is required to file separate writ petition. Therefore this petition also suffers from the misjoiner of the causes of action.

21. Now coming to the third question, which has been raised by the petitioner that the respondent No.4 got printed the invitation cards and by issuing those cards invited certain category of persons and thereby discriminated other citizens of India which is violative of Article 14 of the Constitution of India, on this point also the petition is misconceived as the Respondent No.4 invited the particular category of persons i.e. constitutional functionaries and other high ranking officials/officers and other dignitaries on account of their position and status in the society. This was done in order to make all arrangements to ensure that the celebrations is conducted in a smooth and well organized manner without causing inconvenience to anyone and to make sure that law and order is maintained at the expected level. Therefore these arrangements cannot be considered as discriminatory against other citizens of India. Even otherwise this classification made by the Respondent No.4 is reasonable looking to the ground situation. It is not only

that the Respondent No.4 has not done any abnormal thing but throughout the country such celebrations are organized on this line. On the Republic Day when the Republic Day Parade is organized at the India Gate, New Delhi and on Independence Day i.e. 15th August when the arrangements are made at Red Fort, New Delhi; such types of separate arrangements are made for general public, constitutional functionaries, higher Govt. officials and the persons having special position in the society. They are invited to attend the celebrations through invitation card and it is being followed since 1950. Therefore such classification is being adhered to in all sorts of celebrations in order to see that the arrangements are made in such a manner as to ensure success of the celebrations without any inconvenience to anyone, maintaining their dignity and honour and without any Law and order problem. Therefore, the Respondent No.4 has not discriminated any citizen of India. Special arrangements are made only looking to the status of the persons. However all the citizens are allowed to participate and witness the celebrations and to pay their respect to the National Flag.

22. The other point raised by the learned petitioner is that the freedom fighters who had fought for the independence of India and brought this cheerful day and occasion for the Indian citizens must be invited by special invitation cards and they must be given special status and respect looking to their contribution in the freedom movement. As far as this point is concerned, no one can deny this aspect of the

prayer of the petitioner. It is expected of the administration that as and when any celebrations of national importance or state level or district level celebrations is arranged then freedom fighters should always be given respect and they should always be invited as special invitees and special place must be reserved for them because they are the citizens who brought all cheers to the citizens of India. The district administration must prepare a list of such freedom fighters and invite them to such celebrations.

23. Since the petitioner has not been able to make out a prima facie case in order to take cognizance of the grievance raised in the petition and to proceed further. Therefore it is unnecessary for this Court to enter into the factual aspects and also to examine as to whether the alleged behaviour of the respondents No. 1 to 3 comes within the ambit of insult, disrespect or dishonour to the National Flag, Constitution or Republic Day.

24. In the result the petition has no substance and the same is dismissed in limine at this admission stage, subject to the observations made in para-22 above.

Sd/-
L.C.BHADOO
Judge